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LOUIS C. PAUL & ASSOCIATES, PLLC
730 FIFTH AVENUE, 9TH FLOOR
NEW YORK, NY 10019

EXAMINER	
CHIN, RANDALL E	
ART UNIT	**PAPER NUMBER**
3723	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Office Action Summary	Application No.	Applicant(s)	
	10/696,069	POPOVSKY ET AL.	
	Examiner	Art Unit	
	Randall Chin	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *25 January 2007 and 27 August 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3-13,57 and 59-63* is/are pending in the application.

4a) Of the above claim(s) *63* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3-13, 57 and 59-62* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Newly submitted claim 63 is directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The invention of method (process) claim 63 can be used to make another and materially different product such as one where the solid cleansing agent pourable soap is not distributed substantially throughout the cleansing pad.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 63 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1, 3-13, 57 and 59-62 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-39 of copending Application No. 10/562,311. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claim is rendered obvious by, for example, claims 1 and 39 of copending Application No. 10/562,311 since it would have been obvious to one of ordinary skill in the art to have modified the melting point range of the solid cleaning agent pourable soap down to about 120 degrees F to about 160 degrees F depending on desired characteristics of the cleansing pad such as the particular type of pad material, types of additives used (if any), pad porosity, type of soap used, etc. Through optimization, one of ordinary skill has good reason to pursue these known options which are well within his or her technical grasp.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 6, 61 and 62 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The scope of claim 6 cannot be accurately determined (in conjunction with claim 1) since the Examiner queries how the cleansing pad with the "web of fibers" can also be **non-porous substrate**. Further, the Examiner questions how one would get the solid cleansing pourable soap ***into*** **the non-porous substrate**.

Claims 61 and 62 set forth negative limitations and should be set forth positively instead. In other words, the claims should set forth what the solid cleansing agents consists/includes as opposed to what it does not. Accordingly, the scope between claims 59, 60 and claims 61, 62 cannot be clearly determined.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 3, 5, 9 and 57 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor 5,955,417 (hereinafter Taylor).

With respect to claims 1 and 57, the patent to Taylor '417 discloses a cleansing pad 12 (Fig. 1) comprising a web of fibers (col. 3, lines 43-47) forming a pad 10 and a solid cleansing agent 14 (col. 4, lines 2-5) distributed substantially throughout said

substrate (col. 3, line 66 to col. 4, line 2) in a quantity sufficient for multiple uses (col. 4, lines 1-2) of the pad "in conjunction with a solvent that dissolves the solid cleansing agent for cleansing purposes." It should be noted that the quoted phrase is not a positive recitation and is merely functional in form. As for claim 1 reciting specifically reciting that the solid cleansing agent "pourable soap" has a "melting point of from about 120 degrees F to about 160 degrees", Taylor specifically teaches that the solid cleansing agent pourable soap may comprise a multitude of various solid cleansing compositions (col. 4, lines 5-42) and **even more specifically** fatty acid based soaps, such as tallow fatty acid, coconut fatty acid, or a mixture of both which are considered glycerine based (col. 4, line 42 48) and deemed to already have a "melting point of from about 120 degrees F to about 160 degrees F." Taylor further explicitly teaches that the cleansing agent 14 is solid and pourable and is distributed substantially throughout the pad in a quantity sufficient for multiple uses (e.g., 10 uses) (col. 3, line 61 to col. 4, line 61). The same reasoning above applies also for claim 57 which recites that solid cleansing agent "pourable soap" is in essentially solid form at a first temperature range of less than about 120 degrees F and is in essentially pourable molten form in a second temperature range of from about 120 degrees F to about 160 degrees F.

As for claim 3, the pad comprises synthetic materials (col. 3, lines 43-49).

As for claim 5,the pad is "porous" (col. 3, lines 28-30).

As for claim 9, the pad comprises non-woven materials (col. 3, lines 43-45).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. Claims 1, 3, 5, 8-11, 57, 59 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor 5,955,417 (hereinafter Taylor).

With respect to claim 1, the patent to Taylor '417 discloses a cleansing pad 12 (Fig. 1) comprising a web of fibers (col. 3, lines 43-47) forming a pad 10 and a solid cleansing agent 14 (col. 4, lines 2-5) distributed substantially throughout said substrate (col. 3, line 66 to col. 4, line 2) in a quantity sufficient for multiple uses (col. 4, lines 1-2) of the pad "in conjunction with a solvent that dissolves the solid cleansing agent for cleansing purposes." It should be noted that the quoted phrase is not a positive recitation and is merely functional in form.

In the alternative, as for claim 1 specifically reciting that the solid cleansing agent pourable soap has a "melting point of from about 120 degrees F to about 160 degrees F", Taylor explicitly teaches that the cleansing agent 14 is solid and pourable and is distributed substantially throughout the pad in a quantity sufficient for multiple uses (e.g., 10 uses) (col. 3, line 61 to col. 4, line 61). Taylor goes on to further recite that the soap 14 is chosen such that it is liquid at elevated temperatures and that the temperature composition, flow rate onto the lofty web fiber material, viscosity of the cleansing agent etc. are all chosen in accordance with the nature and thickness of the

lofty web material and chosen such that the liquid cleansing agent is adequately distributed substantially throughout the pad (col. 4, lines 42-61). The mere fact that Taylor does not explicitly recite that solid cleansing agent "pourable soap" has a "melting point of from about 120 degrees F to about 160 degrees F", does not mean that Taylor fails to already teach or suggest such a broad melting point range (if not already as set forth above). In the instant case, it is the position of the Examiner that the limitations of claim 1 would have been obvious because of the particular known techniques carried out by Taylor pertaining to the process of forming the cleansing pad with the solid cleansing agent "pourable soap" and the disclosed selection and choice of temperature for the liquid cleansing composition during the forming process are part of the ordinary capabilities of one skilled in the art. Selection of a suitable melting point for the solid cleansing agent pourable soap is deemed well within the technical grasp or "know-how" of one of ordinary skill since such parameter can depend on various factors such as nature and thickness of the lofty web material, desired foaming characteristics, desired blend characteristics, etc. One skilled in the art could have chosen the claimed melting point range for the "pourable soap" by known methods which would have yielded the predictable result of optimum liquefaction of the solid cleansing agent to one of ordinary skill at the time of the invention. The same reasoning above applies also for claim 57 which recites that solid cleansing agent pourable soap is in essentially solid form at a first temperature range of less than about 120 degrees F and is in essentially pourable molten form in a second temperature range of from about 120 degrees F to about 160 degrees F.

As for claim 3, the pad comprises synthetic materials (col. 3, lines 43-49).

As for claim 5,the pad is "porous" (col. 3, lines 28-30).

Whether the pad is woven (claim 8) or non-woven is well within the level of ordinary skill in the cleansing pad art and is conventionally known. They are deemed mere mechanical equivalents of one another for their excellent cleaning characteristics.

As for claim 9, the pad comprises non-woven materials (col. 3, lines 43-45).

As for claims 10 and 11, the claimed weight ratios are also within the level of ordinary skill and merely depends on the desired final use of the product. Taylor is clearly concerned with the amount of cleansing agent relative the substrate and through optimization, one skilled in the art will select weight ratios based upon the specific proposed use of the pad (col. 3, line 61 to col.4, line 5).

As for claims 59 and 60, the provision of natural soap for the solid cleansing agent would be well within the capabilities of one of ordinary skill for purely economical reasons and to avoid any further synthetic or man-made processes.

10. Claims 4 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Lanham 3,284,963 (hereinafter Lanham).

The patent to Taylor discloses all of the recited subject matter as set forth above with the exception of the pad comprising naturally occurring materials. The patent to Lanham discloses a cleansing pad comprising a web of fibers comprising naturally occurring materials (col. 1, lines 63-66). It would have been obvious to one of ordinary

skill in the art to have modified Taylor's pad such that it comprises naturally occurring materials as taught by Lanham for reducing overall manufacturing costs. Synthetic and naturally occurring pad fibers are both well known and conventionally employed in the cleansing pad art.

As for claim 7, Lanham's pad comprises a "sponge" 8 (col. 4, lines 28-35). It would have been obvious to one of ordinary skill in the art to have modified Taylor's pad such that it includes sponge as taught by Lanham for improving liquid retention/absorption.

11. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Reuven 5,960,506 (hereinafter Reuven).

Taylor teaches all of the recited subject matter as set forth previously with the exception of the pad having fragrances. Reuven teaches a cleansing pad having fragrances (col. 4, lines 1-12). It would have been obvious to one skilled in the art to have provided Taylor's device with fragrances as suggested by Reuven '506 for the purpose of adding a soothing aromatherapy effect.

12. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Hsu 6,171,007 (hereinafter Hsu).

The patent to Taylor discloses all of the recited subject matter as set forth above with the exception of the pad further including one or more colorants. The patent to Hsu discloses a cleansing pad that can have colorants (col. 2, lines 64-67). It would have

been obvious to one of ordinary skill in the art to have modified Taylor's pad such that it includes one or more colorants as taught by Hsu for rendering the pad more aesthetically pleasing to the eye.

Conclusion

13. Applicant's arguments filed 25 January 2007 and 27 August 2007 have been fully considered but they are not persuasive.

Applicant's arguments concerning Taylor have been thoroughly reviewed and considered and are deemed adequately explained and addressed by the above art rejections. In response to Applicant's argument that there is no suggestion to combine the applied references, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). Applicant should note that with the applied references, the test for combining references is what the combination of disclosures taken as a whole would suggest to one of ordinary skill.

Applicant primarily argues the meaning of "pourable soap." It is the position of the Examiner that the instant application fails to adequately or more specifically define what "pourable soap" means. Note that although related U.S Application No. 10/562,311 may specifically mention "pourable soap", U.S. Application 10/562,311 is a **later filed**

application relative to the instant application. Accordingly, a "pourable soap" is being construed as explained by the above art rejections based Taylor and not by that defined in Mr. Eric Jungermann's affidavit (please see below). Note, no formal, specific and/or technical chemical definition has been presented by Applicant in the **instant specification** and/or referred to in any technical handbook/textbook and provided as evidence for the phrase "pourable soap." Accordingly, the definition of "pourable soap" in claim 1 has been given its broadest reasonable interpretation **consistent with the supporting description**. A "pourable soap" has been given its plain meaning as understood by one having ordinary skill in the art (and not necessarily a Ph.D. with Mr. Jungermann's qualifications) **unless defined by the Applicant in the specification with "reasonable clarity, deliberateness, and precision", which the instant specification is devoid of**.

Further, the Affidavit of Eric Jungermann, Ph.D. filed 25 January 2007 has also been reviewed and considered and is deemed insufficient to overcome the above 35 U.S.C. 102(b) rejection to Taylor. Further, any definitions of the phrase "pourable soap" by Mr. Jungermann has not been attributed such specific, technical definition for the above reasons.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randall Chin whose telephone number is (571) 272-1270. The examiner can normally be reached on Monday through Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Randall Chin
Primary Examiner
Art Unit 3723